

Copies of the state commission decisions are attached as exhibits to Nextel Partners' initial and supplemental responses to the Consumer Advocate's position statement.<sup>34</sup>

In general, in the states where Nextel Partners is designated an ETC, the respective commissions found that Nextel Partners met the applicable statutory criteria under federal law. Conversely, in the two (2) states (Minnesota and Nebraska) where written decisions were issued denying Nextel Partners ETC status, those commissions based their denials on the lack of sufficient evidence. In addition, the Nebraska Public Service Commission ("NPSC") held that: (1) Nextel Partners' designation as an ETC was inconsistent with the public interest; and (2) the NPSC's designation of a third or fourth ETC in a given territory served by a non-rural common carrier was "purely discretionary" under section 214(e)(2) of the Act.

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<sup>34</sup>Provided that:

1. With respect to Louisiana, Nextel Partners states that: (A) the Louisiana Public Service Commission voted to grant Nextel Partners ETC status; and (B) no written order has been issued.
2. With respect to Texas, Nextel Partners explains that: "On May 13, 2004, the Texas [Public Utility] Commission orally denied ETC designation. No written order has issued." Nextel Partners' supplemental response, at 7.

## IX.

Discussion

## A.

Federal Law

The commission has: (1) granted ETC status to GTE Hawaiian Telephone Company, Incorporated ("GTE Hawaiian Tel," nka Verizon Hawaii Inc.) and SIC; and (2) denied ETC designation to TelHawaii, Inc., without prejudice.<sup>15</sup> In each case, the commission focused on whether the applicant met the requirements under section 214(e)(1)(A) and (B) of the Act, for designation as an ETC.

The federal government has delegated to the commission the authority to designate a telecommunications carrier as being eligible to receive federal universal service support. Federal law mandates that a state commission designate an applicant an ETC if it meets the requirements under section 214(e)(1)(A) and (B) of the Act. Furthermore, the state commission:

1. In an area served by a rural telephone company, may designate another common carrier an ETC if such a designation is consistent with the public interest; and
2. In all other areas, shall designate more than one (1) common carrier an ETC for a service area designated by the state commission, so long as each requesting carrier meets

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<sup>15</sup>See Decision and Order No. 16111, filed on December 4, 1997, in Docket No. 97-0363 (GTE Hawaiian Tel); Decision and Order No. 16737, filed on December 9, 1998, in Docket No. 98-0317 (SIC); and Decision and Order No. 16118, filed on December 11, 1997, in Docket No. 97-0409 (TelHawaii, Inc.).

the requirements of section 214(e)(1)(A) and (B) of the Act.  
47 U.S.C. § 214(e)(2).

The Consumer Advocate seeks to expand the statutory requirements set forth in section 214(e)(1)(A) and (B), to include the Joint Board's additional recommendations.

The Joint Board encourages state commissions to conduct rigorous, fact-intensive reviews of requests for ETC designation. Recommended Decision, at pages 5 - 6, paragraphs 9 - 13. Concomitantly, the Joint Board believes that its additional recommendations "concerning ETC qualifications should be flexible and non-binding on the states[,] " noting that "[e]ach state commission [is] uniquely qualified to determine its own ETC eligibility requirements as the entity most familiar with the service area for which ETC designation is sought." *Id.* at page 5, paragraph 10.

At this juncture, the FCC has not ruled on the merits of the Joint Board's recommendations. Instead, on June 8, 2004, the FCC issued its Notice of Proposed Rulemaking, seeking comments on the Recommended Decision.<sup>36</sup>

The commission, thus, is faced with: (1) deferring this proceeding until the FCC formally adopts or denies, in whole or in part, the Joint Board's recommendations; or (2) addressing the merits of Nextel Partners' request at this time. In this instance, the commission opts to act on Nextel Partners' request,

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<sup>36</sup>In re Federal-State Joint Board on Universal Service, FCC's Notice of Proposed Rulemaking, released June 8, 2004, in CC Docket No. 96-45.

without delay, while embracing the principles underlying the Joint Board's recommendations.

B.

ETC Designation

Universal service is an evolving level of quality telecommunications services that "should be available at just, reasonable, and affordable rates." 47 U.S.C. § 254(b)(1) and (c)(1). The underlying principles of universal service, as set forth in section 254(b)(3), are:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3).

The Consumer Advocate urges the commission to proceed cautiously in these un-chartered waters, noting that if Nextel Partners, as a CMRS provider, is granted ETC status, other comparable providers may follow as well. Ultimately, the Consumer Advocate seeks to preserve the integrity of the federal universal service fund.

The commission finds that the granting of ETC designation to a CMRS provider such as Nextel Partners is not without precedent. See Section VIII(3), above. Furthermore, a request for ETC status represents a commitment on the applicant's part that it seeks to offer, advertise, and provide the

FCC-designated core services to qualified consumers, at affordable, comparable rates.

The commission finds that Nextel Partners meets the applicable requirements under federal law for designation as an ETC for its service area within the State. Specifically, Nextel Partners:

1. Is a common carrier. 47 U.S.C. § 153(10) and (44); and 47 C.F.R. §§ 20.9(a)(4), 54.201(d), and 54.5.

2. Offers the FCC-designated core services within its designated service area, either using its own facilities or a combination of its own facilities and the resale of other telecommunications carriers' services." 47 U.S.C. §§ 254(a) and 214(e)(1)(A); and 47 C.F.R. §§ 54.101 and 54.201(d)(1) and (f).

3. Advertises the availability of these core services using media of general distribution. 47 U.S.C. § 214(e)(1)(B); and 47 C.F.R. § 54.201(d)(2).

4. Will advertise and make available to qualifying low-income consumers Lifeline and Link Up services. 47 C.F.R. Part 54, Subpart E.

In making these pertinent findings, the commission emphasizes that Nextel Partners' application is verified under oath by the Vice President/General Counsel of its parent company,

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"Nextel Partners represents that upon its ETC designation, it will offer and participate in the federal Lifeline and Link Up programs available to qualified low-income customers. See Joint Board's Recommended Decision, at page 9, paragraph 20 (the FCC has determined that the "offer" requirement does not require a telecommunications carrier to actually provide the core services throughout its designated service area prior to its ETC designation).

Nextel Partners Operating Corp., pursuant to HAR § 6-61-17.<sup>38</sup> Furthermore, Nextel Partners' initial and supplemental responses to the Consumer Advocate's position statement are signed by local counsel. See HAR §§ 6-61-1, 6-61-13(a), and 6-61-16(c); and Rule 11, Hawaii Rules of Civil Procedure.

C.

Public Interest

The commission also finds that Nextel Partners' designation as an ETC is consistent with the public interest.

Nextel Partners is a provider of CMRS. Its designation as an ETC will provide eligible consumers with an additional choice of service providers and greater mobility, specifically in the study area served by SIC.

In addition, as an ETC, Nextel Partners commits to participating in the federal Lifeline and Link Up programs, thus providing qualified low-income customers with the choice of using CMRS, and access to the FCC-designated core services. Nextel Partners, through its self-imposed voluntary commitments, also commits to: (1) promptly fulfilling all reasonable customer requests for service; and (2) providing a quality level of service. Finally, Nextel Partners commits to advertising, offering, and providing the FCC-designated core services

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<sup>38</sup>See Exhibit A of Nextel Partners' application. The affidavit of this same company official also formed the basis of Nextel Partners' ETC designation by the Public Service Commission of Wisconsin and the Arkansas Public Service Commission, respectively. See Nextel Partners' application, Exhibit 3, at 18, paragraph 8, and Exhibit 4, at 1 - 2 and 7.

throughout the State, thus, minimizing any potential for "cherry picking" or "cream skimming" on its part.

D.

Conditions of ETC Designation

Nextel Partners recommends that the commission impose the voluntary commitments as conditions to its ETC designation. Nextel Partners acknowledges the commission's authority to impose conditions upon an ETC, is consistent with federal law.<sup>39</sup>

To ensure the integrity of the federal universal service fund and its support programs, the commission imposes the following conditions upon Nextel Partners' ETC designation, consistent with the public interest and the Consumer Advocate's concerns:

1. Nextel Partners' voluntary commitments, set forth in Section VII.B, above, are adopted herein by reference. Unless ordered otherwise, the due date for the annual reports referenced in Section VII.B shall be December 31<sup>st</sup> of each calendar year, with the first report due by December 31, 2004. Presently, these annual reports consist of: (A) the number of consumer complaints per 1,000 handsets; (B) the number of requests for service Nextel Partners was unable to meet; and (C) a summary description of all capital projects that exceed \$500,000, and the network upgrade and expansion projects that were completed in the previous year.

<sup>39</sup>See, e.g., Joint Board's Recommended Decision, at pages 5 - 7 and 14 - 15, paragraphs 10, 15, and 33 - 34 (States may impose their own eligibility requirements beyond those listed in 47 U.S.C. § 254(b)(1)) (States may extend generally applicable requirements to all ETCs to ensure, preserve, and advance universal service).

In addition, for all consumer requests received for areas that are presently not served by Nextel Partners' existing network facilities, Nextel Partners shall provide information on the number of requests it was unable to meet and the reasons why, and the number of requests it did meet, and under which step of its voluntary commitment checklist (paragraph 3(b)) it was able to provide service.

2. Nextel Partners shall comply with all applicable standards governing CMRS providers in the State, including the standards set forth in HAR chapter 6-80, to the extent modified or not waived by Docket No. 03-0186.

3. Nextel Partners' use of federal universal service support monies shall be consistent with applicable federal law, including any FCC regulations, decisions, and orders. In this respect, the commission reiterates that section 254(e) of the Act explicitly limits an ETC's use of such funds "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of [section 254(e)]." 47 U.S.C. § 254(e).

As part of this condition, Nextel Partners will also be required to file, on an annual basis, its formal build-out plan, describing in detail its plan to expand and enhance its network infrastructure and facilities with the use of federal universal service support monies. Nextel Partners shall also identify the "problem areas" and consumers it intends to serve, explain why these areas or consumers have the need for service by an ETC, and



describe how it intends to provide the core services to these areas and consumers utilizing federal universal service support monies "for the provision, maintenance, and upgrading of [its] facilities and services for which the support is intended."

Unless ordered otherwise, the due date for Nextel Partners' annual formal build-out plan shall be December 31<sup>st</sup> of each calendar year; provided that the first two (2) reports shall be due by September 1 and December 31, 2004.

4. By September 1, 2004, Nextel Partners shall file its detailed advertising plan for the provision of the FCC-designated core services, including the content and manner of its planned advertisements, and the targeted consumers.

5. Nextel Partners shall comply with any and all future laws, decisions, or orders applicable to the federal universal service fund and support programs, including the FCC's decision on the Joint Board's Recommended Decision.

6. Consistent with the commission's general and investigative powers, Nextel Partners shall fully cooperate and respond to any commission requests for information or data. Likewise, Nextel Partners shall fully cooperate with any similar requests from the Consumer Advocate.

7. The commission reserves the right to revoke Nextel Partners' ETC status: (A) should any of the information or data provided by Nextel Partners in this proceeding be proven inaccurate or incorrect; (B) if Nextel Partners' receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions,

and orders, or applicable State law, including any of the conditions imposed by the commission herein; or (C) if Nextel Partners does not satisfy any of the conditions or requirements imposed by the commission. As noted by the Joint Board, in its Recommended Decision:

Where an ETC fails to comply with [the] requirements in section 214(e) and any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification previously granted. Several states have already adopted such requirements in their ETC designation processes. The Alaska Commission required a competitive ETC to file an annual certification in order to monitor the continued appropriate use of funds.

Joint Board's Recommended Decision, at page 20, paragraph 48 (footnotes and text therein omitted); see also id. at page 19, paragraph 45 (the FCC and states have the authority to rescind ETC designations for failure to comply with the requirements of Section 214(e) of the Act and any other imposed conditions).

The commission expresses its confidence that the foregoing conditions sufficiently address the Consumer Advocate's overall concerns.

E.

Designated Service Area

Nextel Partners' designated service area encompasses the rural and non-rural service areas referred to in Exhibit E of its application, i.e., its licensed service area within the State.

F.

Annual State Certification

The Joint Board recommends that the states adopt an annual certification process "for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs." See Recommended Decision, at pages 19 - 20, paragraphs 46 - 48.

The commission intends to examine this issue in a future proceeding. Any annual certification process, if adopted by the commission, will apply to all ETCs designated in this State.

X.

Orders

1. Nextel Partners' request for designation as an eligible telecommunications carrier under federal law is approved, effective from the date of this decision and order. Its designated service area encompasses the rural and non-rural service areas referred to in Exhibit E of its application, i.e., its licensed service area within the State.
2. The conditions set forth in Sections VII.B and IX.D, above, are adopted and incorporated herein by reference.
3. Nextel Partners shall comply with its voluntary commitments set forth in Section VII.B, and with the conditions set forth in Section IX.D, above. In addition, Nextel Partners shall comply with all applicable standards governing CMRS providers in the State, including the standards set forth in HAR

chapter 6-80, to the extent modified or not waived by Docket No. 03-0186.

4. Unless ordered otherwise, the due date for the annual reports referenced in Section VII.B shall be December 31<sup>st</sup> of each calendar year, with the first report due by December 31, 2004. Presently, these annual reports will consist of: (A) the number of consumer complaints per 1,000 handsets; (B) the number of requests for service Nextel Partners was unable to meet; and (C) a summary description of all capital projects that exceed \$500,000, and the network upgrade and expansion projects that were completed in the previous year. In addition, for all consumer requests received for areas that are presently not served by Nextel Partners' existing network facilities, Nextel Partners shall provide information on the number of requests it was unable to meet and the reasons why, and the number of requests it did meet, and under which step of its voluntary commitment checklist (paragraph 3(b)) it was able to provide service.

5. Nextel Partners is also required to file, on an annual basis, its formal build-out plan, describing in detail its plan to expand and enhance its network infrastructure and facilities with the use of federal universal service support monies. Nextel Partners shall also identify the "problem areas" and consumers it intends to serve, explain why these areas or consumers have the need for service by an ETC, and describe how it intends to provide the core services to these areas and consumers utilizing federal universal service support monies "for

the provision, maintenance, and upgrading of [its] facilities and services for which the support is intended."

Unless ordered otherwise, the due date for Nextel Partners' annual formal build-out plan shall be December 31<sup>st</sup> of each calendar year; provided that the first two (2) reports shall be due by September 1 and December 31, 2004.

6. By September 1, 2004, Nextel Partners shall file its detailed advertising plan for the provision of the FCC-designated core services, including the content and manner of its planned advertisements, and the targeted consumers.

7. Nextel Partners' use of federal universal service support monies shall be consistent with applicable federal law, including any FCC regulations, decisions, and orders.

8. Nextel Partners shall comply with any and all future laws, decisions, or orders applicable to the federal universal service fund and support programs, including the FCC's decision on the Joint Board's Recommended Decision.

9. Nextel Partners shall fully cooperate and respond to any requests for information or data from the commission or Consumer Advocate.

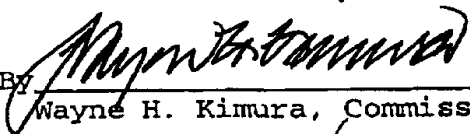
10. The commission reserves the right to revoke Nextel Partners' ETC status: (A) should any of the information or data provided by Nextel Partners in this proceeding be proven inaccurate or incorrect; (B) if Nextel Partners' receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions, and orders, or applicable State law, including any of the

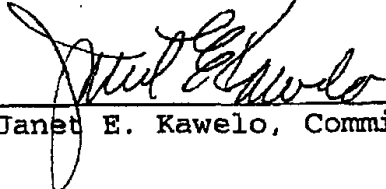
conditions imposed by the commission herein; or (C) if Nextel Partners does not satisfy any of the conditions or requirements imposed by the commission.

DONE at Honolulu, Hawaii this 25th day of June, 2004.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

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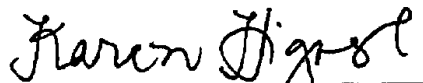
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21089 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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Karen Higashi

DATED: June 25, 2004

# REPORT

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*Louisiana Public Service Commission*

POST OFFICE BOX 91154  
BATON ROUGE, LOUISIANA 70821-9154

COMMISSIONERS

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District III  
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Telephone: 225-342-9888

LAWRENCE C. ST. BLANC  
Secretary

(MRS.) VON M. MEADOR  
Deputy Undersecretary

EVE KAHAO GONZALEZ  
General Counsel

June 29, 2004

**VIA FEDERAL EXPRESS**

Irene Flannery  
Vice President – High Cost  
& Low Income Division  
Universal Service Administrative  
Company  
2120 L Street, N.W.  
Suite 600  
Washington, D.C. 20037

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 – 12th Street, S.W.  
Washington, D.C. 20554

Irene Flannery  
Vice President – High Cost  
& Low Income Division  
Universal Service Administrative  
Company  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

**Re: CC Docket 96-45**  
**Certification Pursuant to 47 C.F.R. §§ 54.313 & 54.314**  
**SAC 273006**

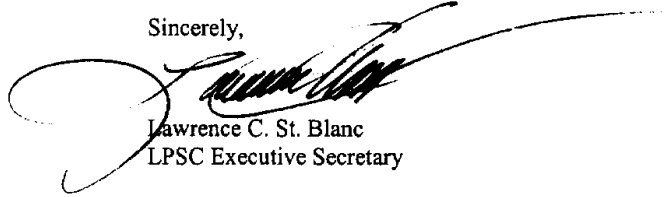
Ms. Flannery and Ms. Dortch:

The Louisiana Public Service Commission ("LPSC") has received a letter from NPCR, Inc. d/b/a Nextel Partners (the "Company") certifying that all federal high cost universal service support received by the Company will be used pursuant to Section 254(e) of the Communications Act. A copy of the Company's certification is enclosed herewith as Exhibit A. Pursuant to 47 C.F.R. §§ 54.313 and 54.314, the LPSC therefore certifies that all federal high cost support received by the Company will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended. This certification applies only for support provided in calendar year 2004.

The LPSC's Order U-27289, issued June 29, 2004, designating the Company as an eligible telecommunications carrier ("ETC") in the State of Louisiana is enclosed herewith as Exhibit B.

If you have any questions regarding this letter, please contact me at (225) 342-4427.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence C. St. Blanc", with a large, sweeping flourish extending to the right.

Lawrence C. St. Blanc  
LPSC Executive Secretary

Enclosures

cc: Gordon Polozola, Esq.  
Mark J. Ayotte, Esq.

## EXHIBIT A

June 17, 2004

**VIA FEDERAL EXPRESS**

Louisiana Public Service Commission  
**Attn: Lawrence C. St. Blanc**  
Executive Secretary  
Galvez Building, 12th Floor  
602 North Fifth Street  
P. O. Box 91154  
Baton Rouge, LA 70821-9154

**Re: High Cost Certification of NPCR, Inc. d/b/a Nextel Partners  
LPSC Docket No. U-27289**

Dear Mr. St. Blanc:

This certification is provided pursuant to 47 C.F.R. §§ 54.313 and 54.314. On behalf of NPCR, Inc. d/b/a Nextel Partners (the "Company"), I hereby certify under penalty of perjury that all high-cost universal service support provided to the Company for the 2004 calendar year will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996.

The Louisiana Public Service Commission ("LPSC") voted to approve the Company's Application for designation as an eligible telecommunications carrier ("ETC") in the State of Louisiana on June 9, 2004. While no written order has been issued at the time of the signing of this letter, the Company's eligibility to receive certain high cost universal service support for the fourth quarter of 2004 is dependent on the FCC and USAC receiving a certification from the LPSC on or before July 1, 2004. See 47 C.F.R. §§ 54.3131(d) and 54.314(d). Accordingly, the Company hereby requests that the LPSC transmit a letter to the FCC and USAC to provide for the certification. The letter will need to be received by the FCC and USAC on or before July 1 to be effective.

The Company has not been previously designated as an ETC in the State of Louisiana and has not previously received federal universal service support for the State of Louisiana. Immediately upon designation, the Company will provide all of the supported services required by 47 U.S.C. § 214(e) and the LPSC's Order. The Company is capable of providing, and will continue to provide, all of the supported services for the remainder of calendar year 2004. The Company will advertise the availability of and charges for the supported services as required by 47 U.S.C. § 214(e) and the LPSC's Order, and will continue to do so during calendar year 2004.

The Company will further submit an additional certification to the LPSC for calendar year 2005 prior to August 31, 2004.

Louisiana Public Service Commission  
June 17, 2004  
Page 2

STATE OF WASHINGTON )  
COUNTY OF King ) ss:

I certify under penalty of perjury under the laws of the State of Washington that I am authorized to make this certification on behalf of NPCR, Inc. d/b/a Nextel Partners and that the foregoing is true and correct.

NPCR, INC. d/b/a NEXTEL PARTNERS

By: Donald J. Manning  
Donald J. Manning  
Vice President and General Counsel

Subscribed and sworn to before  
me this 17<sup>th</sup> day of June, 2004.

Gillian L. Veenema  
Notary Public



**EXHIBIT B**

1659375v1

# LOUISIANA PUBLIC SERVICE COMMISSION

## ORDER NO. U-27289

### NPCR, INC., D/B/A NEXTEL PARTNERS, EX PARTE

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*Docket No. U-27289 In re: Request for Authority for designation as an Eligible Telecommunications Carrier within the State of Louisiana, pursuant to Section 214(e)(6) of the Communications Act of 1934.*

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(Decided at the June 9, 2004 Business and Executive Session.)

#### *Nature of the Case*

NPCR Inc., d/b/a Nextel Partners ("Nextel") filed a request April 24, 2003 seeking to be designated as eligible telecommunications carriers ("ETCs") pursuant to 47 U.S.C. § 214(e)(2) throughout its service area for purposes of receiving federal universal service support and high cost certification in Louisiana.<sup>1</sup> 47 U.S.C. § 214(e)(2) provides that the Louisiana Public Service Commission ("Commission"), upon request and consistent with the public interest, convenience, and necessity, may in an area served by a rural telecommunications carrier, and shall in all other areas, designate more than one common carrier as an ETC for a service area designated by the state commission, so long as the carrier meets the requirements of 47 U.S.C. § 214(e)(1).

#### *Jurisdiction and Applicable Law*

The Commission exercises jurisdiction over public utilities in Louisiana pursuant to the Louisiana Constitution Article IV, Section 21(B), which states:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provide by law.

Pursuant to the above authority, the Commission adopted the Regulations for Competition in the Local Telecommunications Market, as most recently amended in Appendix B to the General Order dated July 24, 2002. As defined therein in Section 101,

(6) Commercial Mobile Radio Service (CMRS) – a mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) the functional equivalent of such a mobile service described in paragraph (a) of this definition. 47 CFR § 20.3, as amended. CMRS includes "Radio Common Carriers: as that term is defined and used in La. R.S. § 45:1500 *et seq.*

(7) Commercial Mobile Radio Service Provider – any person or entity engaged in the provision of a service that is a commercial mobile radio service. CMRS provider includes "Radio Common Carriers: as that term is defined and used in La. R.S. § 45:1500 *et seq.*

The Commission is given broad power to regulate telephone utilities and may adopt all reasonable and just rules, regulations, and orders affecting or connected with the service or

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<sup>1</sup> The application was erroneously filed under § 214(e)(6), which governs applications filed with the Federal Communications Commission seeking ETC status.

operation of such business.<sup>2</sup> As stated previously, 47 U.S.C. § 214(e)(2) grants the power to the state commissions to designate a common carrier that meets the requirements of 47 U.S.C. § 214(e)(1) as an ETC for a service area specified by the commission.

The requirements of 47 USC § 214(e) are as follows:

(1) Eligible telecommunications carriers - A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges there for using media of general distribution.

(2) Designation of eligible telecommunications carriers - A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Additionally, the supported services that must be provided as a requirement for ETC designation are contained in 47 C.F.R. § 54.101, which provides as follows:

- (a) Services designated for support. The following services or functionalities shall be supported by federal universal service support mechanisms:
  - (1) Voice grade access to the public switched network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz;
  - (2) Local usage. "Local usage" means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;
  - (3) Dual tone multi-frequency signaling or its functional equivalent. "Dual tone multi-frequency" (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

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<sup>2</sup> South Central Bell Tel. Co. v. Louisiana Public Service Commission, 352 So.2d 999, (La. 1977.)



- (4) Single-party service or its functional equivalent. "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
- (5) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems;
- (6) Access to operator services. "Access to operator services" is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;
- (7) Access to interexchange service. "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to directory assistance. "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll limitation for qualifying low-income consumers. Toll limitation for qualifying low-income consumers is described in subpart E of this part.
- (b) Requirement to offer all designated services. An eligible telecommunications carrier must offer each of the services set forth in paragraph (a) of this section in order to receive federal universal service support.
- (c) Additional time to complete network upgrades. A state commission may grant the petition of a telecommunications carrier that is otherwise eligible to receive universal service support under Sec. 54.201 requesting additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation. If such petition is granted, the otherwise eligible telecommunications carrier will be permitted to receive universal service support for the duration of the period designated by the state commission. State commissions should grant such a request only upon a finding that exceptional circumstances prevent an otherwise eligible